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Executive summary

Note by the Secretariat

Addendum

Contents

	Page
II. Executive summary	2
Burkina Faso	2

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II. Executive summary

Burkina Faso

1. Introduction: overview of the legal and institutional framework of Burkina Faso in the context of implementation of the United Nations Convention against Corruption

Burkina Faso signed the United Nations Convention against Corruption on 10 December 2003 and ratified it on 10 October 2006.

Burkina Faso is a republic. The President of the Republic is the Head of State and of the executive and presides over the Council of Ministers under the terms established by the Constitution. The Prime Minister is the Head of Government. Legislative power is exercised by the National Assembly. Judicial power is exercised by the courts and tribunals.

Burkina Faso has a civil-law system based on the Constitution, which ranks above all other laws. Duly ratified and published treaties or agreements may be applied directly provided that they are sufficient in themselves (art. 151 of the Constitution).

Burkina Faso was reviewed during the first cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (CAC/COSP/IRG/13/1/Add.28).

The main national instruments implementing chapters II and V of the Convention are the Constitution, Act No. 004-2015/CNT on preventing and combating corruption in Burkina Faso (hereinafter the "Anti-Corruption Act") and Act No. 016-2016/AN on combating money-laundering and the financing of terrorism in Burkina Faso (hereinafter the "Money-Laundering and Financing of Terrorism Act"), which was adopted on the basis of a uniform law of the West African Economic and Monetary Union (WAEMU).

Other relevant texts are the Code of Criminal Procedure (Order No. 68-7 of 21 February 1968 establishing a code of criminal procedure) and the Code of Civil Procedure (Act No. 22-99/AN of 18 May 1999 on the code of civil procedure).

The main institution in the fight against corruption is the Higher Authority for State Control and the Fight against Corruption (ASCE-LC). Organic Act No. 082-2015/CNT of 24 November 2015 regulates the powers, composition, organization and operation of ASCE-LC.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

In 2013, Burkina Faso established a national anti-corruption policy accompanied by an action plan, both of which were adopted by Decree No. 2013-859/PRES/PM of 3 October 2013. The development, implementation and evaluation of the policy are entrusted to ASCE-LC, the Advisory Board of which includes representatives of civil society (art. 2 of Organic Act No. 082-2015).

As part of its mandate (art. 8 (2) of Organic Act No. 082-2015), ASCE-LC has organized a number of awareness-raising campaigns, particularly in schools and legal settings. However, a lack of consistency was noted in the component relating to the prevention of corruption.

ASCE-LC can recommend the review of legal instruments and administrative measures that relate to the fight against corruption.

ASCE-LC is headed by the Comptroller-General of the State, who is appointed through a competitive recruitment procedure (art. 14 of Organic Act No. 082-2015)

for a non-renewable term of five years. A decree establishing the terms of recruitment has not yet been adopted and the members of the Advisory Board have not yet been appointed. ASCE-LC members are independent of the departments, services and agencies that they monitor (art. 51 of Organic Act No. 082-2015).

Since 2008, the Comptroller-General of the State has submitted to the President of Burkina Faso an annual general report on the activities of ASCE-LC, with a copy sent to the Prime Minister and the President of the National Assembly (art. 18 of Organic Act No. 082-2015). The resulting recommendations are subject to follow-up by ASCE-LC. In addition, ASCE-LC participates, at its request, in reviews by counterpart organizations in other countries of the region.

Burkina Faso is a party to a number of regional and international anti-corruption instruments, including the African Union Convention on Preventing and Combating Corruption and the relevant directives of WAEMU.

Other institutions also contribute to the prevention of corruption, such as the Technical Inspectorate of Services (ITS); the National Financial Information Processing Unit (CENTIF); the National Anti-Fraud Brigade (BNAF); the National Authority against Fraud; the National Ethics Committee; and the Public Procurement Regulatory Authority (ARCOP). Coordination among those institutions is ensured by ASCE-LC (arts. 8 (10) and 9 (9) of Organic Act No. 082-2015), including through the Consultation Framework against Corruption (CCLC).

In addition to those institutions, the media and civil society organizations engaged in the fight against corruption and work in the area of good governance participate in prevention activities.

The budget of ASCE-LC is set under law at 0.1 per cent of the national budget, which should ensure the Authority's independence and adequate funding (art. 59 of Organic Act No. 082-2015). In practice, however, the narrow interpretation of the budgetary provisions results in inadequate budget allocations.

Burkina Faso has informed the Secretary-General of the authority designated under article 6, paragraph 3, of the Convention.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The recruitment, promotion and retirement of public officials are governed by Act No. 081-2015/CNT on the General Civil Service Regulations. Admission to the civil service takes place through a competitive recruitment procedure (art. 18), the management and control of which are entrusted to the General Recruitment Agency of the State (AGRE). Vacancies are published on the Agency's website. Promotion to a more senior position or grade takes place through a professional examination (arts. 21 and 102).

The right to remuneration, including a salary and a residence allowance, is enshrined in article 36 of Act No. 081-2015/CNT.

Specialized training, including a module on ethics, is required for admission to certain public bodies, such as the judiciary and the body of court clerks. In addition, ASCE-LC has organized several training sessions and awareness-raising campaigns for various ministries, schools and other bodies.

The Electoral Code establishes the eligibility requirements for election to office. Malpractice is established as a ground for exclusion from election to the post of municipal councillor (art. 242). Conviction for a corruption offence may also constitute a ground for exclusion under article 82 of the Anti-Corruption Act.

Candidatures for elected public office and political parties are funded by the State budget. That funding is subject to control by the Court of Auditors (arts. 2, 10 and 13 of Act No. 008-2009 on the funding of political parties and groups). Private funding is not regulated.

Rules on the prevention of conflicts of interest are contained in article 6 of the Anti-Corruption Act and articles 2 and 50 of the Public Procurement Act.

Civil servants are prohibited from exercising any profit-generating activities (art. 40 of Act No. 081-2015/CNT). Certain senior officials and other dignitaries are required to submit regular declarations of interests (art. 7 of the Anti-Corruption Act).

Article 4 of the Anti-Corruption Act requires employers to take into account the principles of integrity, honesty and responsibility in the management of careers. Article 148 of the Statute of the Judiciary provides for the decoration of judges who display integrity.

The Anti-Corruption Act requires public institutions to adopt codes of conduct (art. 5), the monitoring and evaluation of which are entrusted to ASCE-LC (art. 41). However, codes of conduct have not yet been adopted for certain bodies. The human resources departments of the various public institutions ensure compliance with the rules contained in the codes, and apply disciplinary measures if those rules are violated (art. 153 of Act No. 081-2015/CNT).

Burkina Faso has developed its codes of conduct on the basis of the African Charter on Values and Principles of Public Service and Administration.

The Anti-Corruption Act establishes as criminal offences the failure to report acts of corruption (art. 79) and acts of violence against whistle-blowers (art. 77). Helplines and physical mailboxes for reporting acts of corruption have been set up in certain Government departments that are vulnerable to corruption, including reporting to external departments. The draft act on special investigative techniques, which was in the process of being adopted at the time of the country visit, contains provisions aimed at safeguarding the anonymity of whistle-blowers.

Burkina Faso requires only the high-ranking officials and senior officials listed in article 13 of the Anti-Corruption Act to submit a declaration of assets and interests. False declarations and the failure to submit a declaration are punishable (arts. 29 and 30 of the Act).

The declaration of gifts, donations and other benefits is mandatory for all public officials (art. 32 of the Anti-Corruption Act). The acceptance of gifts with a value that exceeds the regulatory threshold is punishable (art. 33 of the Act). Declared items should be handed over to the State and inventoried by ASCE-LC (art. 32 of the Act). However, at the time of the country visit, that system was not yet operational.

In Burkina Faso, judges and prosecutors form a single body. The independence of the judiciary is guaranteed by article 129 of the Constitution.

Judges have security of tenure under article 6 of the Statute of the Judiciary. Prosecutors are subject to the authority of the Minister of Justice under article 8 of that Statute.

In order to take up a position within the judiciary, trainee judges and prosecutors must pass a competitive examination for admission to, and complete a course of training at, the Judicial Training Institute (art. 11 of the Statute of the Judiciary).

Burkina Faso has a code of ethics for members of the judiciary, which was recently revised (2017) and is applicable to both judges and prosecutors. The performance of the duties of a member of the judiciary is incompatible with the performance of any other professional or salaried role, commercial or otherwise (art. 106 of the Statute of the Judiciary). The imposition of disciplinary measures is without prejudice to criminal liability (art. 136 of the Statute). Individuals subject to proceedings may apply to the Disciplinary Board in connection with the conduct of a judicial official (art. 33 of Act No. 049-2015 on the organization, composition, powers and functioning of the High Judicial Council).

Public procurement and management of public finances (art. 9)

The public procurement procedure is centralized and is primarily governed by Act No. 039-2016/AN on the general regulations governing public procurement and Decree No. 2017-049 on procedures for the award, performance and regulation of public procurement contracts and the outsourcing of public services.

Burkina Faso enshrines the principle of the separation of management, control and regulatory functions (art. 8 of Act No. 039-2016/AN).

Contracts for works, the supply of goods, services and outsourced public services are awarded to the lowest bidder following an open tendering procedure (arts. 52 and 53 of Decree No. 2017-049). In exceptional cases, use is made of a restricted tendering procedure (art. 73 of the Decree) or direct contracting (arts. 74 and 75 of the Decree).

An invitation to tender preceded by expressions of interest is the rule for contracts for the provision of intellectual services (arts. 52 and 65 of the Decree).

The threshold values for the award of public procurement contracts are established according to the nature of the service and the type of contracting authority (art. 6 of Decree No. 2017-049). Requests for quotations, introduced by the new regulations as a procurement procedure, constitute a simplified form of invitation to tender (art. 71 of the Decree). Exceptional procedures are set out in article 75 of the Decree.

The publication of invitations to tender is mandatory, under penalty of nullity, in accordance with article 21 of Act No. 039-2016/AN. Invitations are published in the public procurement journal, on the website of the body responsible for ex ante control and, where appropriate, in a WAEMU publication (art. 51 of Decree No. 2017-049).

The legislation of Burkina Faso requires the contracting authority to establish the conditions of the contract in advance of any invitation to tender (art. 48 of Decree No. 2017-049). The meeting at which tenders are opened is public (art. 97 of the Decree).

With regard to dispute settlement, Act No. 039-2016/AN allows preliminary recourse to the contracting authority (art. 38) or directly to a non-judicial body (art. 39). In the absence of a settlement, the first party to take action may bring the matter before the relevant administrative court or an arbitral tribunal (art. 43). An appeal may be lodged against decisions of the administrative court (art. 45).

Act No. 039-2016/AN prohibits personnel responsible for public procurement who have an interest liable to compromise transparency from taking part in the procedure for the award of public procurement contracts (art. 48). Furthermore, Burkina Faso adopted Decree No. 2015-1260 establishing a code of ethics and conduct in public procurement, which requires any official, regardless of his or her hierarchical position, to submit a declaration of interests (art. 54).

Adoption of the budget is governed by Organic Act No. 073-2015/CNT of 6 November 2015 on financial law. Draft laws are prepared by the Minister of Finance for adoption by the Council of Ministers (art. 58 of the Act). They are then submitted to the National Assembly for adoption (art. 60 of the Act). An amending law may be enacted to respond to any possible matter of urgency. Provisions for the transition to the programme budget are gradually being implemented, and the process should be complete by 2019 (art. 115 of the Act).

The Finance Commission ensures the proper execution of finance laws (art. 94 of Organic Act No. 073-2015). Burkina Faso also adopted Act No. 008-2013/AN establishing a code of transparency in the management of public finances, which provides for the regular publication of reports on the implementation of the budget (art. 36).

The financial operations of the State are subject to administrative, judicial and parliamentary control. Administrative control includes internal, concomitant and a posteriori control (art. 82 of Organic Act No. 073-2015/CNT). Parliament may request

the Court of Auditors to conduct any investigations necessary in order to obtain information (art. 95 of the Act).

Burkina Faso is a party to the Uniform Act on the Organization and Harmonization of Enterprise Accounting of the Organization for the Harmonization of Business Law in Africa (OHADA), and uses the accounting system established by that organization.

The general accounting system of the State is established on the basis of those standards (art. 3 of Decree No. 2016-601 on the conceptual framework for State accounting).

Articles 101 to 114 of Organic Act No. 073-2015 establish provisions on liability with regard to the implementation of public budgets.

Public reporting; participation of society (arts. 10 and 13)

The right to information is enshrined in article 8 of the Constitution. In addition, Burkina Faso adopted Act No. 051-2015 on the right to access public information and the administrative documents of all public bodies (art. 3).

Article 52 of Act No. 051-2015 provides for the creation of a national authority for access to public information, responsible for facilitating and monitoring the implementation of the Act. However, that body had not yet been established at the time of the country visit.

Reasons must be given for any refusal to provide access to information (art. 76 of the Act), and refusals may be subject to administrative and judicial remedies (arts. 72 to 82 of the Act).

Furthermore, the dissemination of information to the public is ensured by the Government's spokesperson and through the websites of the 27 ministries.

Freedom of association is guaranteed under article 21 of the Constitution. Associations may be formed freely, without prior administrative authorization (art. 4 of the Freedom of Association Act). Furthermore, civil society is involved in decision-making in the context of the annual consultation and dialogue with the Government.

Representatives of civil society serve on the Advisory Board of ASCE-LC (art. 34 of Organic Act No. 082-2015) and on the Regulatory Board of the Public Procurement Regulatory Authority.

The Anti-Corruption Act requires public institutions to publish information on the organization and functioning of the decision-making processes of the public administration (art. 34).

The National Anti-Corruption Network has organized several events on preventing and combating corruption, including in collaboration with ASCE-LC. It has also published regular reports on the situation with regard to corruption in Burkina Faso, including corruption risk mapping.

ASCE-LC receives anonymous complaints and reports concerning suspected cases of corruption (art. 46 of Organic Act No. 082-2015).

Private sector (art. 12)

Representatives of the private sector serve on the Advisory Board of ASCE-LC. With respect to cooperation between the law enforcement authorities and the private sector, only cooperation with CENTIF is provided for (arts. 5, 12, 14 and 24 of the Money-Laundering and Financing of Terrorism Act).

Burkina Faso has not taken sufficient measures to preserve integrity within private-sector entities.

Burkina Faso has established a national trade and personal property credit register, which can be accessed by the public free of charge (art. 12 of Decree No. 2006-484

on the creation, functions, organization and operation of the national trade and personal property credit register).

Burkina Faso has not taken measures to prevent misuse of the procedures regulating private entities, nor has it taken measures to impose restrictions on the exercise of professional activities by former public officials in the private sector.

Burkina Faso has not taken measures to prohibit the acts contained in article 12, paragraph 3, of the Convention, carried out for the purpose of committing any of the offences established in accordance with the Convention.

Measures to prevent money-laundering (art. 14)

Burkina Faso is a member of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA), a regional body similar to the Financial Action Task Force (FATF). Its implementation, in that capacity, of the recommendations of the Financial Action Task Force was assessed in a mutual evaluation report in 2009. The sixth and most recent follow-up report was issued in 2015. CENTIF has been a member of the Egmont Group of Financial Intelligence Units since 2013, and is also a member of the network of financial intelligence units of WAEMU and the Economic Community of West African States (ECOWAS).

The Money-Laundering and Financing of Terrorism Act covers all aspects of money-laundering and, in principle, complies fully with international anti-money-laundering standards, including those of GIABA and WAEMU. The Act establishes a risk-based approach, with three levels of due diligence (simplified, standard and enhanced). A national risk assessment is provided for in article 10 of the Act. At the time of the country visit, that assessment was under way but had not yet been completed.

Under article 1 ("Definitions") (33) of the Act, any offence, even if committed in the territory of another State, may be a predicate offence to money-laundering.

Article 1 (7) stipulates that the oversight authorities are the national or community authorities of the West African Monetary Union (WAMU) and WAEMU that are empowered, by virtue of any law or regulation, to monitor the natural and legal persons referred to in articles 5 and 6 of the Act. The entities subject to obligations relating to combating money-laundering and the financing of terrorism are listed in articles 5 and 6 of the Act. The list includes financial institutions; gambling establishments; persons organizing the sale of precious stones and precious metals; members of the legal profession; and other persons trading in goods, where such trade involves payments made in cash in the amount of five million CFA francs or more. The obligations of the oversight authorities are set out in articles 86 et seq. of the Act.

Verification of the identity of customers and beneficial owners (as defined in article 1 (12)), is provided for in articles 18 and 26 to 31 of the Act. Article 18, paragraph 1, establishes the requirement to systematically verify the identity of the customer and, where applicable, the beneficial owner before entering into a business relationship. Articles 50 to 55 provide for enhanced customer due diligence in certain situations, such as in the context of cross-border correspondent banking relationships and with regard to politically exposed persons. In contrast, articles 46 to 49 establish simplified customer due diligence obligations for low-risk situations. Article 19 establishes the requirement to exercise constant due diligence with regard to business relationships.

Burkina Faso has established a financial intelligence unit, known as the National Financial Information Processing Unit (CENTIF). The legal basis for the Unit, which is an administrative-type financial intelligence unit under the authority of the Minister of Economic Affairs and Finance, is the Money-Laundering and Financing of Terrorism Act. CENTIF has financial autonomy, independence with regard to all matters within its jurisdiction, and managerial autonomy.

In respect of national cooperation, CENTIF may have recourse to contact persons within, inter alia, the police and the gendarmerie (art. 63 of the Act). In addition,

articles 74 and 75 of the Act address national cooperation. Cooperation within the WAEMU community and international cooperation are covered by articles 76 and 77 and by article 78, respectively.

Article 12 of the Act establishes measures for declaring and monitoring the cross-border movement of cash and negotiable instruments. In particular, the physical cross-border transportation of cash and bearer instruments in the amount of 5 million CFA francs (approximately 10,000 euros) or more is subject, upon entry to and exit from national territory, to a written declaration. In respect of real estate transactions, the sale value cannot be paid in cash (art. 14 of the Act). Articles 33 and 34 cover wire transfers.

2.2. Successes and good practices

- The independent budget of ASCE-LC, which must not be less than 0.1 per cent of the national budget (art. 6)
- The participation of ASCE-LC in peer reviews (art. 6)
- The obligation of the authorities to ensure that all vacancy advertisements draw attention to the principles of integrity, honesty, accountability, efficiency and transparency (art. 7)
- The fact that representatives of civil society and the private sector serve on the boards of ASCE-LC and the Public Procurement Regulatory Authority (arts. 10 and 13)
- The adoption of an act on access to information (arts. 10 and 13).

2.3. Challenges in implementation

It is recommended that Burkina Faso:

- Ensure greater coherence in its national anti-corruption policy (art. 5 (1))
- Ensure that ASCE-LC has an adequate budget and thus the necessary material resources and specialized staff; adopt and implement a training plan for ASCE-LC staff (art. 6 (2))
- Adopt the decree establishing the terms of recruitment of the Comptroller-General of the State and the comptrollers of the State; appoint the members of the Advisory Board of ASCE-LC; recruit the necessary staff for ASCE-LC, including verification assistants and investigators (art. 6 (2))
- Establish adequate procedures for the selection and training of individuals for public positions that are considered vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions (arts. 7 (1) (b) and 9)
- Strive to strengthen its system, particularly with regard to multiple roles, in order to better prevent conflicts of interest, and consider prohibiting the candidature of persons convicted of offences established in accordance with the Convention (art. 7 (2))
- Consider regulating the private funding of candidatures for public office and of political parties (art. 7 (3))
- Endeavour to adopt codes of conduct for all public officials and disseminate the content of those codes; continue efforts to adopt the draft act on new investigative techniques (art. 8 (2) and (4))
- Put the asset declaration system into operation; expand the list of persons required to declare their assets to cover all positions vulnerable to corruption; consider reducing the threshold value of gifts (art. 8 (5))
- Adopt an effective and efficient risk management system (art. 9 (2) (d))

- Ensure that the provisions of Act No. 051-2015 on the right to access public information are implemented; adopt legal instruments that enable the national authority for access to public information to fulfil its mandate (art. 10)
- Increase cooperation between the private sector and the law enforcement agencies in order to prevent corruption; promote the development of standards and procedures to ensure the integrity of private entities, including through the prevention of conflicts of interest and the imposition of restrictions on certain former public officials (art. 12 (2) (a) and (c))
- Take measures to prevent the misuse of procedures regulating private entities (art. 12 (2))
- Ensure that all the acts listed in article 12, paragraph 3, are prohibited when such acts are carried out for the purpose of committing an offence established in accordance with the Convention (art. 12 (3)).

2.4. Technical assistance needs identified to improve implementation of the Convention

Burkina Faso indicated that it required technical assistance in the following areas:

- Capacity-building of comptrollers of the State, assistants and investigators in the monitoring and evaluation to be carried out by ASCE-LC (art. 6)
- Technical support for the management of declarations of property and assets (art. 8)
- Conduct of the national assessment of risks relating to money-laundering and the financing of terrorism (art. 14).

3. Chapter V: asset recovery

Burkina Faso has a legislative and institutional framework for asset recovery that complies almost fully with the Convention. However, a significant lack of cases and case law limits the implementation of that framework to legislative compliance with chapter V of the Convention.

3.1. Observations on the implementation of the articles under review

General provision, special cooperation, bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

International cooperation is provided for by the Anti-Corruption Act, the Money-Laundering and Financing of Terrorism Act, Organic Act No. 082-2015 and the relevant treaties, particularly the ECOWAS Convention on Mutual Assistance in Criminal Matters, of 1992. In addition, under article 151 of the Constitution, duly ratified or approved treaties or agreements (including the Convention), once published, take precedence over domestic legislation and can be directly applied.

As a member of the Egmont Group and on the basis of article 114 of the Anti-Corruption Act and article 78 of the Money-Laundering and Financing of Terrorism Act, CENTIF may exchange information both upon request and without prior request. CENTIF uses the Egmont Secure Web.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

As indicated above, provisions governing verification of the identity of customers and beneficial owners are contained in articles 18 and 26 to 31 of the Money-Laundering and Financing of Terrorism Act and in article 43 of Regulation No. 15/2002/CM/UEMOA. Articles 19 and 20 of the Money-Laundering and Financing of Terrorism Act establish the general obligation to exercise constant customer due diligence.

Politically exposed persons are defined in article 1 (44) of the Money-Laundering and Financing of Terrorism Act. That definition includes domestic politically exposed persons (second subparagraph). Under articles 22 and 54 of the Act, politically exposed persons are subject to special measures and enhanced due diligence. With regard to the Consolidated United Nations Security Council Sanctions List, the Ministry of Foreign Affairs transmits lists of the persons concerned to the supervisory authorities.

The obligation to keep documents for a period of 10 years is established in article 35 of the Money-Laundering and Financing of Terrorism Act. Banks that have no physical presence and that are not affiliated with a regulated financial group are not allowed to be based in Burkina Faso (art. 101 of the Anti-Corruption Act). Any correspondent banking relationship with a shell bank is prohibited (art. 52 of the Money-Laundering and Financing of Terrorism Act).

The Anti-Corruption Act establishes a system for the declaration by certain persons of their interests and assets (arts. 7 to 28), and appropriate penalties for non-compliance (arts. 29 and 30). Any public official who has an interest in or signature or other authority over a financial account in a foreign country must report that relationship to ASCE-LC (art. 103 of the Act).

The obligation to report suspicious transactions is established in article 79 of the Money-Laundering and Financing of Terrorism Act. CENTIF receives suspicious transaction reports from persons subject to the reporting obligation. However, most of the reports it receives are from banks. Articles 67 to 69 of the Act relate to the processing of suspicious transaction reports by CENTIF, the blocking of transactions that are the subject of a suspicious transaction report and the action to be taken in response to such reports.

According to article 67 of the Act, when investigations carried out by CENTIF point to facts that may constitute the offence of laundering of the proceeds of crime or the financing of terrorism, CENTIF informs the State prosecutor. The State prosecutor is obliged to prosecute (art. 98 of the Anti-Corruption Act). CENTIF may order the blocking of a transaction that is the subject of a suspicious transaction report for a period of 48 hours (art. 68 of the Money-Laundering and Financing of Terrorism Act).

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Article 104 of the Anti-Corruption Act explicitly provides that the courts have jurisdiction to hear civil actions for the direct recovery of property. Foreign States may be a party to legal proceedings and are subject to the general internal rules of procedure, including with regard to the need to demonstrate a legitimate interest. The capacity to act as a party to legal proceedings includes the capacity to initiate civil action before the national courts in order to establish title to or ownership of property or to claim compensation or damages. *Cautio iudicatum solvi* is required and the foreign State must use a lawyer registered at the local bar.

A confiscation order issued by a foreign court may be enforced under articles 105 and 113 of the Anti-Corruption Act, article 150 of the Money-Laundering and Financing of Terrorism Act and article 20 of the ECOWAS Convention on Mutual Assistance in Criminal Matters. Confiscation upon request for mutual legal assistance is possible on the basis of articles 83, 111 and 112 of the Anti-Corruption Act, articles 128 and 148 of the Money-Laundering and Financing of Terrorism Act and articles 18 and 19 of the ECOWAS Convention. Confiscation of property may be ordered even in the absence of a criminal conviction (art. 106 of the Anti-Corruption Act).

A freezing or seizure order issued by a foreign court may be enforced under articles 107 et seq. of the Anti-Corruption Act, article 147 of the Money-Laundering and Financing of Terrorism Act and article 20 of the ECOWAS Convention. A request for mutual assistance for the purposes of seizure may be executed on the basis of

articles 83 and 107 et seq. of the Anti-Corruption Act and articles 99 et seq. of the Money-Laundering and Financing of Terrorism Act. Provisional measures without prior request may be ordered on the basis of articles 99 and 100 of the Money-Laundering and Financing of Terrorism Act.

The content of requests for mutual legal assistance is determined by the above-mentioned provisions of the Anti-Corruption Act (arts. 111 and 112), the Money-Laundering and Financing of Terrorism Act (art. 139) and the ECOWAS Convention. In addition, under article 151 of the Constitution, the Convention can be directly applied.

Burkina Faso provided a copy of its relevant laws in the context of the review mechanism. Burkina Faso does not make the adoption of confiscation and seizure measures conditional on the existence of a relevant treaty.

Before lifting any provisional measure, the requesting State is given the opportunity to present its reasons in favour of continuing the measure (art. 110, second paragraph, of the Anti-Corruption Act). The rights of bona fide third parties are protected under article 83, second paragraph, and article 111 of the Anti-Corruption Act; articles 147, 150, third paragraph, and 160 of the Money-Laundering and Financing of Terrorism Act; and article 20 (2) of the ECOWAS Convention.

Return and disposal of assets (art. 57)

Burkina Faso can return confiscated property in direct application of the Convention. According to article 115 of the Anti-Corruption Act, confiscated property is disposed of in accordance with the applicable treaties and the legislation in force. That includes article 57 of the Convention. Under article 151 of the Money-Laundering and Financing of Terrorism Act, property confiscated in the territory of Burkina Faso at the request of foreign authorities becomes State property unless an agreement with the requesting State establishes otherwise.

The rights of bona fide third parties and the rights of legitimate owners are protected by the aforementioned articles. Cooperation requests are, in principle, executed free of charge. However, there is nothing to prevent Burkina Faso from deducting reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property.

3.2. Successes and good practices

- The definition of politically exposed persons includes domestic politically exposed persons (art. 52)
- ASCE-LC works with its counterparts in the subregion on the basis of the Convention (art. 59).

3.3. Challenges in implementation

It is recommended that Burkina Faso:

- Consider establishing a body for the recovery of seized and confiscated assets, based on the model of the Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC) of France (art. 51)
- Implement, in practice, provisions on asset recovery and, in particular, on confiscation, seizure and freezing (art. 54)
- Provide ASCE-LC with the necessary resources and an adequate mechanism to receive and verify declarations of assets, and consider establishing an electronic declaration system (art. 52 (5))
- Increase the dissemination of information regarding the obligations of persons subject to the requirement to submit suspicious transaction reports, and ensure that those persons fulfil their obligations (art. 58).

3.4. Technical assistance needs identified to improve implementation of the Convention

Burkina Faso indicated that it required technical assistance in the following areas:

- To enhance technological capacities with respect to the detection of proceeds of crime and capacity-building for stakeholders (art. 52)
 - To train personnel in the detection and identification of proceeds of crime and in the entire procedure for requesting the return of assets (art. 52)
 - Logistical assistance in the context of special investigations (art. 58).
-